

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 3727 of 1999

Between:

N.Srinivas Reddy S/o.N.Laxma Reddy
O/o.Deputy Executive Engineer (SW),Kamareddy Sub-division R/o.Kamareddy,
Nizamabad Dist.

..... PETITIONER

AND

- 1 The Managing Director Andhra Pradesh Scheduled Caste
Cooperative Finance Corporation Ltd., Hyderabad.
- 2 The Chairman (Dist.Collector) District Scheduled Caste Service
Co-operative Society Ltd., Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or Writ or Direction more particularly one in the nature of Mandamus declaring the Memo.No.A5/931/98 dated 5-12-98 of the 2nd Respondent as illegal and void and consequently set aside the order dated 27-11-92 of the 2nd respondent in proceedings No.B4/931/90 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

Counsel for the Petitioner:MR.M.RATNA REDDY

Counsel for the Respondents: Mr. S. Mohan Rao, S.C. for Respondents

The Court made the following :

THE HONOURABLE SRI JUSTICE

C.V.RAMULU

WP.No.3727 of 1999

ORDER:

This writ petition is filed seeking Mandamus declaring the Memo.A5/931/98 dated 5-12-1998 of the 2nd respondent as illegal, void and consequentially to set side the order dated 27-11-1992 of the 2nd respondent in his proceedings No.B4/931/92.

It is the case of the petitioner that he was appointed during May 1986 as Assistant Executive Engineer in the 1st respondent Corporation and was posted at Kamareddy sub-division under the control of the 2nd respondent. Ever since his appointment he has been discharging his duties to the satisfaction of his superiors. While so, on 15-4-1991 he was transferred from Kamareddy Sub-division in

Nizamabad district to the office of the Chairman, District Scheduled Caste Service Co-operative Society Limited, Ranga Reddy District, but later for want of vacancy he was again directed to report to the Superintending Engineer (SW) from 29-5-1991. While so, on 29-8-1991 the Superintending Engineer (SW) served on the petitioner proceedings dated 29-8-1991 passed by the 2nd respondent wherein the petitioner was placed under suspension from service with immediate effect. The suspension order reveal that the petitioner was responsible for grave irregularities in execution of the C.I well sanctioned and executed in favour of Shri Pathya and 2 others of Somarampet village, Machareddy Mandal, Nizambad district. An enquiry was ordered and conducted behind the back of the petitioner. Therefore, the petitioner filed WP.No.14806/1991 before this Court questioning the orders placing him under suspension. By an interim order dated 4-11-1991 in WPMP.No.14806/1991 this court suspended the suspension order and the petitioner was allowed to work in the post. However, the 2nd respondent appointed the Revenue Divisional Officer, Kamareddy to conduct an enquiry and submit a report. In fact it is the Revenue Divisional Officer who investigated into the alleged charges as a preliminary enquiry officer and submitted a preliminary enquiry report and subsequently the very same person was appointed as enquiry officer. The Revenue Divisional Officer issued a charge memo dated 23-4-1992 for which the petitioner filed reply. The Revenue Divisional Officer conducted a farce an enquiry and submitted a report dated 25-5-1992. Basing on the said report, the 2nd respondent issued show-cause notice dated 26-8-1992 proposing to impose penalty of dismissal from service against the petitioner. The petitioner replied to the same on 13-10-1992 and requested to drop the proposed punishment. However, the 2nd respondent by his proceedings dated 27-11-1992 imposed the punishment as under:-

“

1. *Stoppage of (5) annual grade increments with cumulative effect.*
2. *Recovery of Rs.10438/- from my salary, which was paid to the beneficiaries by the Mandal Development Officer, Mandal Praja Parishad, Machareddy only after the recommendations of the Deputy Executive Engineer (SW), Kamareddy, through bank cross cheque.*
3. *Treating the suspension period undergone by me as leave to which I am eligible.”*

Aggrieved by the same, the petitioner filed appeal to the 1st respondent on 2-3-1993. However, the same was not disposed of and he went on making representation after representation and one such final one he made was dated 17-7-1997.

However, by the impugned order dated 5-12-1998 it was informed that the representations made by the petitioner were already considered and the Collector passed orders and there are no fresh grounds warranting any review of the orders.

According to the petitioner a farce enquiry was conducted and without there being any evidence on record the petitioner was punished and even assuming that the charges are proved punishment imposed is disproportionate to that of the misconduct.

Though no counter is filed, the learned counsel for the respondents Sri. S.Mohan Rao strenuously contended that the original order calling for the disciplinary proceedings was passed on 27-11-1992 and thereafter the petitioner made several representations and they were all answered negatively, but the petitioner went on making some representation or the other, therefore, finally the authorities have directed him to treat the subject as closed by a Memo dated 5-12-1998, which is sought to be challenged in this writ petition. The misconduct on the part of the petitioner is a matter of record and no further evidence is required in that regard. He has executed the work without there being proper sanction obtained from the authority. In fact, the misconduct is very grave and requires imposing of severe punishment. However, the respondents themselves have taken a lenient view of the matter and imposed stoppage of 5 annual grade increments with cumulative effect apart from recovering the losses caused and also treating the period of suspension as a leave. The writ petition itself is a speculative and imaginary one and suffers from irretrievable latches since the petitioner approached this court after more than 9 years in the guise of the orders dated 5-12-1998. In the said memo dated 5-12-1998 it was communicated that the collector has already passed the orders. Therefore, the very writ petition is not maintainable apart from the fact that except saying that the Collector has already considered his appeal and the orders passed by the authorities does not suffer from any infirmity or irregularity calling for interference of this Court under Article 226 of the Constitution of India.

I gave my earnest consideration to the respective submissions made by the counsel

and also perused the impugned order dated 27-12-1992 and the Memo dated 5-12-1998.

Admittedly the order was passed on 27-11-1992 and the petitioner according to the memo dated 5-12-1998 made a representation only on 19-11-1997 and 17-8-1998. Thus there was a delay on the part of the petitioner in approaching the authorities for review.

The charges as seen above are grave in nature and being the matter on record have been proved fully and does not require any interference at the hands of this Court. So far as the findings and imposing of punishment is concerned however this Court is of the considered opinion that this being the 1st charge and there was no other allegation made against the petitioner as to his past conduct, for the misconduct proved the stoppage of 5 annual grade increments with cumulative effect is very harsh and disproportionate to that of the misconduct alleged against him, when the past conduct of the petitioner is clean and when the loss caused to the organization has already been recovered. Generally speaking it is not for this Court to substitute what should be lesser punishment than what is imposed in the impugned order while dealing with the matter under Section 226 of the Constitution of India. But this is a case where the enquiry was initiated in the year 1991 and it was concluded on 27-11-1992 and the writ petition was filed on the basis of the memo dated 5-12-1998 in the month of January, 1999. Therefore, I am of the view that this matter can be put to a quietus here itself by substituting and by modifying the order of punishment.

In the result, the respondents are directed to impose the punishment of stoppage of 5 increments for a period of 10 years from 27-11-1992 and thereafter the same may be revoked and the petitioner is entitled for notional increments and other benefits flowing out of the same. The rest of the punishment imposed as to recovery of the loss caused and treating the period of suspension as leave cannot be interfered by this Court.

The writ petition is allowed to the extent indicated above. No order as to costs.

01st July, 2005

grk

That Rule Nisi has been made absolute as above. Witness the Hon'ble Acting Chief Justice Bilal Nazki on this Friday the First Day of July two thousand and five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The Managing Director Andhra Pradesh Scheduled Caste Cooperative Finance Corporation Ltd., Hyderabad.
- 2 The Chairman (Dist.Collector) District Scheduled Caste Service

Co-operative Society Ltd., Nizamabad.

3. 2 CD copies

4. 1 CC to MRMOHAN RAO

*Form-NIC-OGS/WP{**LOBIS**}*